

ESTTA Tracking number: **ESTTA582566**Filing date: **01/17/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Manzen, LLC
Granted to Date of previous extension	01/19/2014
Address	1335 East Sunset Road, Suite J Las Vegas, NV 89119 UNITED STATES
Attorney information	Jennifer Ko Craft & Andrew Sedlock Gordon & Silver, Ltd. 3960 Howard Hughes Parkway, 9th Floor Las Vegas, NV 89169 UNITED STATES TRADEMARKS@GORDONSILVER.COM Phone:(702) 796-5555

Applicant Information

Application No	79119803	Publication date	07/23/2013
Opposition Filing Date	01/17/2014	Opposition Period Ends	01/19/2014
International Registration No.	1134110	International Registration Date	07/12/2012
Applicant	MABXIENCE, S.A. Yaguaron 1407 UYX UYX		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Pharmaceutical products, namely, anti-inflammatories, preparations used to treat autoimmune diseases and disorders, preparations used to treat oncological and onco-hematological diseases, disorders and conditions

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3159492	Application Date	07/27/2004
Registration Date	10/17/2006	Foreign Priority Date	NONE


Word Mark	XYIENCE
Design Mark	XYIENCE
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/08/01 First Use In Commerce: 2004/08/01 Nutritional supplements in tablet, capsule, powder, chewable and liquid form; dietary supplements in tablet, capsule, powder, chewable and liquid form; hormones; and preparations for enhancing the secretion of the human growth hormone


U.S. Registration No.	3703170	Application Date	09/23/2008
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	XYIENCE XSHOT		
Design Mark	XYIENCE XSHOT		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2009/02/00 First Use In Commerce: 2009/02/00 Dietary supplements; Nutritional supplements		

U.S. Registration No.	4034309	Application Date	02/10/2011
Registration Date	10/04/2011	Foreign Priority Date	NONE
Word Mark	XYIENCE		
Design Mark			
Description of Mark	The mark consists of a barcode design with the text "XYIENCE" below it.		
Goods/Services	Class 005. First use: First Use: 2004/05/20 First Use In Commerce: 2004/05/20 Dietary supplements; Nutritional supplements		


U.S. Registration No.	4134018	Application Date	02/10/2011
Registration Date	05/01/2012	Foreign Priority Date	NONE
Word Mark	POWERED BY XYIENCE		


Design Mark	
Description of Mark	The mark consists of the text "POWERED BY" above and to the right of a barcode design with the text "XYIENCE" below it.
Goods/Services	Class 005. First use: First Use: 2004/05/20 First Use In Commerce: 2004/05/20 Dietary supplements; Nutritional supplements

U.S. Registration No.	3703171	Application Date	09/23/2008
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	XYIENCE XSHOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/02/00 First Use In Commerce: 2009/02/00 Energy drinks		

U.S. Registration No.	3701580	Application Date	04/10/2009
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	XYIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/01/04 First Use In Commerce: 2006/01/04 Bottoms; Gloves; Headwear; Loungewear; Sleepwear; Tops; Undergarments		


U.S. Registration No.	3701582	Application Date	04/10/2009
Registration Date	10/27/2009	Foreign Priority	NONE


		Date	
Word Mark	XYIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2004/10/05 First Use In Commerce: 2004/10/05 Energy drinks; Fruit drinks; Preparations for making beverages, namely, energy drinks and fruit drinks		

U.S. Registration No.	3756925	Application Date	04/10/2009
Registration Date	03/09/2010	Foreign Priority Date	NONE
Word Mark	XYIENCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2004/08/01 First Use In Commerce: 2004/08/01 Retail store services featuring nutritional and dietary supplements, beverages, apparel, and sporting equipment		

U.S. Registration No.	4019538	Application Date	02/10/2011
Registration Date	08/30/2011	Foreign Priority Date	NONE
Word Mark	XYIENCE		


Design Mark	
Description of Mark	The mark consists of a barcode design with the text "XYIENCE" below it.
Goods/Services	Class 025. First use: First Use: 2006/01/03 First Use In Commerce: 2006/01/03 Bottoms; Gloves; Headwear; Loungewear; Sleepwear; Sweatshirts; Tops; Undergarments

U.S. Registration No.	4019539	Application Date	02/10/2011
Registration Date	08/30/2011	Foreign Priority Date	NONE
Word Mark	XYIENCE		
Design Mark			
Description of Mark	The mark consists of a barcode design with the text "XYIENCE" below it.		
Goods/Services	Class 032. First use: First Use: 2006/02/14 First Use In Commerce: 2006/02/14 Energy drinks; Fruit drinks; Preparations for making beverages, namely, energy drinks and fruit drinks		


U.S. Registration No.	4019542	Application Date	02/10/2011
Registration Date	08/30/2011	Foreign Priority Date	NONE
Word Mark	POWERED BY XYIENCE		
Design Mark			
Description of Mark	The mark consists of the text "POWERED BY" above and to the right of a barcode design with the text "XYIENCE" below it.		
Goods/Services	Class 032. First use: First Use: 2006/02/14 First Use In Commerce: 2006/02/14		

	Energy drinks; Fruit drinks; Preparations for making beverages, namely, energy drinks and fruit drinks
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U.S. Registration No.	4019543	Application Date	02/10/2011
Registration Date	08/30/2011	Foreign Priority Date	NONE
Word Mark	POWERED BY XYIENCE		
Design Mark			
Description of Mark	The mark consists of the text "POWERED BY" above and to the right of a barcode design with the text "XYIENCE" below it.		
Goods/Services	Class 035. First use: First Use: 2004/06/01 First Use In Commerce: 2004/06/01 Retail store services featuring nutritional and dietary supplements, beverages, apparel and sporting equipment		

U.S. Registration No.	4117190	Application Date	02/10/2011
Registration Date	03/27/2012	Foreign Priority Date	NONE
Word Mark	XYIENCE		
Design Mark			
Description of Mark	The mark consists of a barcode design with the text "XYIENCE" below it.		
Goods/Services	Class 035. First use: First Use: 2004/06/01 First Use In Commerce: 2004/06/01 Retail store services featuring nutritional and dietary supplements, beverages, apparel and sporting equipment		

U.S. Registration No.	4117191	Application Date	02/10/2011
Registration Date	03/27/2012	Foreign Priority Date	NONE
Word Mark	POWERED BY XYIENCE		

Design Mark	
Description of Mark	The mark consists of the text "POWERED BY" above and to the right of a barcode design with the text "XYIENCE" below it.
Goods/Services	Class 025. First use: First Use: 2006/01/03 First Use In Commerce: 2006/01/03 Bottoms; Gloves; Loungewear; Sleepwear; Sweatshirts; Tops; Undergarments

Attachments	76604146#TMSN.gif(bytes) 77577206#TMSN.jpeg(bytes) 85239517#TMSN.jpeg(bytes) 85239541#TMSN.jpeg(bytes) 77577208#TMSN.jpeg(bytes) 77711928#TMSN.jpeg(bytes) 77711932#TMSN.jpeg(bytes) 77711933#TMSN.jpeg(bytes) 85239528#TMSN.jpeg(bytes) 85239531#TMSN.jpeg(bytes) 85239547#TMSN.jpeg(bytes) 85239551#TMSN.jpeg(bytes) 85239535#TMSN.jpeg(bytes) 85239544#TMSN.jpeg(bytes) Manzen v Mabxience Notice of Opposition.pdf(40259 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer Ko Craft/
Name	Jennifer Ko Craft
Date	01/17/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Manzen, LLC, a Nevada limited liability
company,

Opposer,

v.

Mabxience, S.A., a Uruguayan corporation,

Applicant.

Mark MABXIENCE FROM LAB TO
LIFE

Serial No. 79119803

Published July 23, 2013

NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.101, Opposer Manzen, LLC (“Manzen” or “Opposer”), a Nevada limited liability company with its principal place of business at 1335 East Sunset Road, Suite J, Las Vegas, Nevada 89119, hereby opposes the application filed by Applicant Mabxience, S.A. (“Mabxience” or “Applicant”) for the mark MABXIENCE FROM LAB TO LIFE in International Class 5 (Serial No. 79/119803), published on July 23, 2013.

As grounds for its opposition, Manzen alleges as follows:

1. Manzen owns and operates a leading nutrition and dietary supplement and beverage company under its XYIENCE mark.


2. Manzen and Manzen’s predecessor-in-interest have been offering nutritional and dietary supplements and beverages under the XYIENCE mark, since at least as early as October 5, 2004.


3. In addition to supplements and beverages, Manzen offers a wide variety of other products.

4. Manzen owns several federal trademark registrations and pending applications for its XYIENCE marks and associated designs (the “XYIENCE Marks”), including the following:

(a) XYIENCE for “Nutritional supplements in tablet, capsule, powder, chewable and liquid form; dietary supplements in tablet, capsule, powder, chewable and liquid form; hormones; and preparations for enhancing the secretion of the human growth hormone” in International Class 5 (U.S. Reg. No. 3159492);

(b) XYIENCE XSHOT for “Dietary supplements; Nutritional supplements” in International Class 5 (U.S. Reg. No. 3703170);

(c)  for “Dietary supplements; Nutritional supplements” in International Class 5 (U.S. Reg. No. 4034309);


(d)  for “Dietary supplements; Nutritional supplements” in International Class 5 (U.S. Reg. No. 4134018);


(e) XYIENCE XSHOT for “Energy drinks” in International Class 32 (U.S. Reg. No. 3703171);


(f) XYIENCE for “Bottoms; Gloves; Headwear; Loungewear; Sleepwear; Tops; Undergarments” in International Class 25 (U.S. Reg. No. 3701580);


(g) XYIENCE for “Energy drinks; Fruit drinks; Preparations for making beverages, namely, energy drinks and fruit drinks” in International Class 32 (U.S. Reg. No. 3701582);


- (h) XYIENCE for “Retail store services featuring nutritional and dietary supplements, beverages, apparel, and sporting equipment” in International Class 35 (U.S. Reg. No. 3756925);

- (i) 
XYIENCE for “Bottoms; Gloves; Headwear; Loungewear; Sleepwear; Sweatshirts; Tops; Undergarments” in International Class 25 (U.S. Reg. No. 4019538);

- (j) 
XYIENCE for “Energy drinks; Fruit drinks; Preparations for making beverages, namely, energy drinks and fruit drinks” in International Class 32 (U.S. Reg. No. 4019539);

- (k) 
XYIENCE for “Energy drinks; Fruit drinks; Preparations for making beverages, namely, energy drinks and fruit drinks” in International Class 32 (U.S. Reg. No. 4019542);

- (l) 
XYIENCE for “Retail store services featuring nutritional and dietary supplements, beverages, apparel and sporting equipment” in International Class 35 (U.S. Reg. No. 4019543);

- (m) 
XYIENCE for “Retail store services featuring nutritional and dietary supplements, beverages, apparel and sporting equipment” in International Class 35 (U.S. Reg. No. 4117190);



(n) for “Bottoms; Gloves; Headwear; Loungewear; Sleepwear; Sweatshirts; Tops; Undergarments” in International Class 25 (U.S. Reg. No. 4117191).

5. Manzen’s above-referenced federal trademark registration for its XYIENCE mark corresponding to U.S. Reg. No. 3159492 is incontestable.

6. Manzen has made substantial and continuous use of its XYIENCE Marks for several years and has expended considerable resources in the protection, enforcement, advertising and marketing of its XYIENCE Marks.

7. By virtue of this continuous and extensive use of the XYIENCE Marks, such marks have become invested with substantial goodwill and national recognition and fame.

8. On July 12, 2012, Applicant filed an intent-to-use application to register the mark MABXIENCE FROM LAB TO LIFE for “pharmaceutical, veterinary and sanitary preparations, dietetic substances for medical use and vitamins” in International Class 5. Applicant subsequently amended the description of goods in the Application to “pharmaceutical products, namely, anti-inflammatories, preparations used to treat autoimmune diseases and disorders, preparations used to treat oncological and onco-hematological diseases, disorders and conditions” in International Class 5 (“Applicant’s Goods”).

9. As of the date of publication, Applicant had not submitted a specimen or amended its application to allege use.

10. As seen above, Manzen owns numerous registrations and prior-filed applications for its XYIENCE Marks, including in International Class 5, for goods that are significantly similar to Applicant’s Goods, as well as in several other classes for related products and services.

11. Applicant's MABXIENCE FROM LAB TO LIFE mark is confusingly similar to Manzen's XYIENCE Marks. The dominant portion of Applicant's mark, namely the "MABXIENCE" term, is nearly identical in sight and sound, differing only by the addition of the descriptive "MAB" prefix.

12. Applicant's Goods are also significantly similar and related to the goods and services offered by Manzen under its XYIENCE Marks.

13. While Manzen does not currently offer "pharmaceutical" products under its XYIENCE Marks, its Class 5 registrations are not limited to exclude those products. Furthermore, Manzen's nutritional and dietary supplements could be sold in the same or similar trade channels and to the same prospective purchasers as Applicant's specific products.

14. Therefore, Applicant's registration of the MABXIENCE FROM LAB TO LIFE mark is likely to cause confusion, to cause mistake or deceive customers.

15. Manzen's XYIENCE Marks were in use well before Applicant filed its Application for the MABXIENCE FROM LAB TO LIFE mark on July 12, 2012.

16. Manzen will suffer damage including irreparable injury to its reputation and goodwill if Applicant is permitted to register the MABXIENCE FROM LAB TO LIFE mark.

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WHEREFORE, Manzen prays that the opposition be sustained and that the Board refuse Applicant's application to register the MABXIENCE FROM LAB TO LIFE mark.

Dated: January 17, 2014

Respectfully submitted,

GORDON SILVER

/Jennifer Ko Craft/
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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of January, 2014, a true and complete copy of the foregoing Notice of Opposition has been served by United States mail, first class postage prepaid, on the following addresses for Applicant:

Mabxience, S.A.
Yaguaron 1407
11100 Montevideo
Uruguay

And:

Arturo Perez-Guerrero
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arturo@perezguerrero.com

/Michelle Ledesma/
An employee of Gordon Silver Ltd.